

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RICHARD CRISS, et al.,)
)
Plaintiffs,)
) 8:09CV387
v.)
)
COUNTY OF DAKOTA, NEBRASKA,)
JAMES L. WAGNER, in his official and)
individual capacities, and RODNEY)
HERRON, in his official and individual)
capacities,)
)
Defendants.)
)

MEMORANDUM AND ORDER

This matter is before the court on a motion to dismiss pursuant to [Fed. R. Civ. P. 41\(a\)\(2\)](#) by plaintiffs John M. Gilles, Richard Criss, and Krystal Ramirez, Filing No. [206](#), and by plaintiff Colleen McMahon-Levine, Filing No. [215](#). Plaintiff John M. Gilles seeks dismissal with prejudice of his claim against James L. Wagner in his individual capacity. Plaintiffs Criss and Ramirez seek dismissal with prejudice of all claims against all defendants. Plaintiff McMahon-Levine seeks a dismissal with prejudice of her remaining claims against Rodney Herron and Dakota County.

Defendants have filed a limited partial objection to the plaintiffs' motions. They agree to dismissal but object to the plaintiffs' request that the court order the parties to pay their own costs and fees. They seek to reserve their right to recover their costs and to seek attorneys' fees if they are ultimately successful. The court finds it is not necessary to address the defendants' objections. The court retains jurisdiction over and has the inherent authority to award costs incurred in defending an action prior to its voluntary dismissal by the plaintiff. [Sequa Corp. v. Cooper, 245 F.3d 1036, 1037 \(8th Cir. 2001\)](#). Defendants stipulate to the dismissals and have no need to reserve their rights to seek

fees. Accordingly, the court finds the defendants' objections should be overruled and the voluntary dismissal motions should be granted. The voluntary dismissals render pending motions for summary judgment moot.

IT IS ORDERED:

1. The motion to dismiss filed by plaintiffs Gilles, Criss, and Ramirez (Filing No. [206](#)) is granted.
2. Plaintiff John Gilles's claims against defendant Wagner in his individual capacity are dismissed, with prejudice.
3. Plaintiff Criss's claims against all defendants are dismissed, with prejudice.
4. Plaintiff Ramirez's claims against all defendants are dismissed, with prejudice.
5. Plaintiff McMahon-Levine's motion to dismiss (Filing No. [215](#)) is granted.
6. Plaintiff McMahon-Levine's claims against all defendants are dismissed, with prejudice.
7. This dismissal is without prejudice to any of the remaining claims or the claims of any other plaintiffs to this action.
8. Defendants' motions for summary judgment on the claims of these plaintiffs (Filing Nos. [153](#), [158](#), [162](#), [172](#), [175](#), and [178](#)) are denied as moot.

DATED this 14th day of November, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief District Judge

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